

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 192 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 - No

BADRINARAYAN LAXMANDAS MISTRI

Versus

STATE OF GUJARAT

Appearance:

MR BG PATEL for Petitioners

MR BY MANKAD, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 06/07/98

ORAL JUDGEMENT

Rule. In the facts and circumstances of the case, the matter is taken up for final disposal today.

2. This petition under Articles 226 and 227 of the Constitution challenges the order dated 30.8.1997 passed by the Deputy Collector, Modasa in Tenancy/65/Case No. 33/91 under the provisions of Section 65 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Act").

3. The land admeasuring 49 Are and 47 Sq.Mtrs. belonged to one Laxman Mohanlal. Upon his death, the land was inherited by his widow and sons who are the present petitioners. On 14.8.1997 the Deputy Collector, Modasa issued notice to the petitioners under Section 65 of the Act calling upon them to show cause why the management of the land should not be assumed by the Government on the ground that the land has remained uncultivated or the full and efficient use of the land has not been made for the purpose of agriculture through default of the petitioner. The Deputy Collector has thereafter passed the aforesaid order dated 30.8.1997 mentioning therein that the notice was served on the present petitioner and that the hearing took place on 29.8.1997 on which the petitioners and the Talati-cum-Mantri of the village remained present and they were heard personally. The impugned order thereafter proceeds to state that in view of the revenue record no cultivation took place for a period of two years and no cause was shown why the cultivation did not take place. Hence, the impugned order was passed for the Government assuming the land in question for management.

4. At the hearing of this petition, Mr B.G. Patel, learned counsel for the petitioners has submitted that the petitioners had filed their reply dated 30.12.1996 at Annexure "D" which also refers to the documents produced by the petitioners before the Deputy Collector on 24.11.1992. Moreover, the petitioners were thereafter not served with the notice of the date of hearing and that even the Talati-cum-Mantri had stated in his statement dated 29.8.1997 before the Deputy Collector that the land owners could not be served as they were residing at Himmatnagar. The address of the petitioners is also mentioned in the cause title of the petition. It is further stated that even the Talati-cum-Mantri's own statement shows that the land was being cultivated after 1989-90 and, therefore, also there was no justification for passing the order under Section 65 of the Act.

5. In view of the aforesaid statement of the Talati-cum-Mantri, Mr B.Y. Mankad, learned AGP appearing for the respondents was not in a position to dispute the petitioners' case that the petitioners were not served with the notice of hearing. Hence, it is clear that the impugned order was passed without giving the petitioners a reasonable opportunity of being heard. On this ground alone, the petition deserves to be allowed and the impugned order deserves to be set aside. It is further required to be noted that even according to the statement

of the Talati-cum-Mantri, the land is being cultivated since 1990-91 onwards. The Deputy Collector shall, therefore, consider the reply and the documents already filed by the petitioners before the Deputy Collector and any other and further material/submissions which may be made by or on behalf of the petitioners. The Deputy Collector shall also consider whether this is a fit case for exercising the powers under Section 65 of the Act when the land is being cultivated.

6. The petition is accordingly allowed. The impugned order dated 30.8.197 at Annexure "G" to the petition is accordingly quashed and set aside. Rule is made absolute with costs quantified at Rs. 2,000/- (Rupees Two thousand only).

Sd/-

July 6, 1998 (M.S. Shah, J.)